

ROBERT S. BREWER, JR.
United States Attorney
BRUCE C. SMITH
Assistant U.S. Attorney
California State Bar No. 078225
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 546-8266
E-mail: bruce.smith@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. '19CV1652 AJB KSC

Plaintiff,

COMPLAINT FOR FORFEITURE

V.

ONE 2011 HONDA ACCORD SEDAN,
CA. LICENSE 7WLC811,
VIN: 1HGCP2F43BA092766,
ITS TOOLS AND APPURTENANCES.

Defendant.

By way of complaint against the defendant, ONE 2011 HONDA ACCORD SEDAN, CA. LICENSE 7WLC811, VIN: 1HGCP2F43BA092766, ITS TOOLS AND APPURTENANCES ("Honda Accord sedan"), the United States of America alleges:

1. This Court has jurisdiction over this action by virtue of the provisions of Title 28, United States Code, Section 1335, and Title 21, United States Code, Section 881(a)(6), because the defendant Honda Accord sedan was used or intended for use to transport or facilitate transportation, sale, receipt, possession, or concealment of controlled substances in violation of Chapter 13 of Title 21, United States Code.

2. Venue is proper in this district pursuant to Title 28, United States Code, Section 1395 because the defendant Honda Accord sedan was found in this district.

3. On March 8, 2019, at approximately 10:19 a.m., at the Otay Mesa Port Of Entry in the Southern District of California, Jess Alvarez Gutierrez (“Alvarez Gutierrez”) (

1 as the driver and sole occupant of the defendant Honda Accord sedan, attempted to exit the
2 Republic of Mexico, and enter the United States.

3 A. Upon his arrival at the vehicle primary inspection booth,
4 Alvarez Gutierrez was greeted by U.S. Customs And Border Protection (“CBP”)
5 Officer Bray.

6 B. Alvarez Gutierrez presented his U.S. passport card, and told CBP
7 Officer Bray he was driving home to San Bernardino, in the Central District of California.

8 C. Alvarez Gutierrez offered two (2) negative customs declarations,
9 telling Officer Bray he was bringing nothing from Mexico into the United States.

10 D. Alvarez Gutierrez opened the trunk of the defendant Honda Accord
11 sedan.

12 E. While inspecting the interior spaces of the trunk, Officer Bray lifted the
13 lining on the interior floor or deck of the trunk.

14 F. Upon lifting the lining on the trunk floor or deck, Officer Bray
15 immediately noticed plastic wrapped packages with unknown contents concealed in the
16 quarter panel area.

17 G. CBP Officer Bray immediately summoned a CBP Canine Enforcement
18 Officer (“CEO”) and a CBP controlled substances-detection dog.

19 4. CBP CEO Hendee and his CBP controlled substances-detection dog “Candy”
20 arrived at the primary inspection booth.

21 A. CEO Hendee used Candy to screen the defendant Honda Accord sedan.

22 B. CBP controlled substances-detection dog Candy alerted to the closed
23 trunk of the defendant Honda Accord sedan.

24 C. After the trunk lid of the defendant Honda Accord sedan was again
25 opened, Candy alerted to driver’s side rear quarter panel inside the trunk.

26 D. Alvarez Gutierrez and the defendant Honda Accord sedan were referred
27 to the nearby vehicle secondary inspection area for a more thorough examination.

28 //

1 5. In the vehicle secondary inspection area, the defendant Honda Accord sedan
2 was examined using a Z-portal X-ray device.

3 A. CBP Officer Rodriguez, the Z-portal operator, observed anomalies, or
4 unidentified foreign objects, in the passenger doors and the rear quarter panels of the
5 defendant Honda Accord sedan.

6 B. CBP Officer Rodriguez reported his observations to other CBP officers
7 assigned to examine the defendant Honda Accord sedan.

8 6. CBP Officer Cardona conducted an inspection of the defendant
9 Honda Accord.

10 A. Officer Cardona pulled back the lining of the interior trunk deck of the
11 defendant Honda Accord sedan, and observed a host of plastic wrapped packages.

12 B. Officer Cardona removed a total of 20 plastic wrapped packages from
13 the rear quarter panels of the defendant Honda Accord sedan.

14 C. Officer Cardona examined the rear seat of the defendant Honda Accord
15 sedan, and noted it was loose and not bolted or otherwise secured to the floor.

16 D. Officer Cardona discovered and removed three (3) plastic wrapped
17 packages from under the rear seat.

18 E. Officer Cardona removed the trim or decorative covers on the inside of
19 each of the four (4) doors of the defendant Honda Accord sedan.

20 F. Officer Cardona discovered many more plastic wrapped packages
21 hidden in each of the four (4) doors.

22 G. Officer Cardona discovered and removed a total of 43 plastic wrapped
23 packages from the defendant Honda Accord sedan.

24 7. Forty-one (41) of the plastic wrapped packages discovered in and removed
25 from the defendant Honda Accord sedan contained methamphetamine, a Schedule II
26 Controlled Substance.

27 A. The gross weight of the 41 packages of methamphetamine was
28 approximately 21.96 kilograms (48.3 pounds).

1 8. Two (2) of the plastic wrapped packages discovered in and removed from the
2 defendant Honda Accord sedan contained heroin, a Schedule I Controlled Substance.

3 A. The gross weight of the two (2) packages of heroin was approximately
4 2.26 kilograms (5 pounds).

5 9. The defendant Honda Accord sedan was seized by the CBP officers for
6 forfeiture to the United States as a conveyance used to smuggle controlled substances into
7 the United States.

8 A. The defendant Honda Accord sedan was removed from the port of
9 entry, and delivered to a U.S. Government storage facility (“GOCO”) in the
10 Southern District of California.

11 10. On March 13, 2019, at the GOCO vehicle storage lot in the Southern District
12 of California, CBP CEO Bence and his assigned CBP controlled substances detection dog
13 “Roki” screened the defendant Honda Accord sedan.

14 A. CBP controlled substances detection dog Roki alerted to the rear seat
15 of the defendant Honda Accord sedan.

16 B. CBP CEO Bence pulled back the cover on the rear seat, and discovered
17 multiple plastic wrapped packages concealed within the rear seat.

18 C. CBP CEO Bence immediately notified CBP Officer Moir of his
19 discovery.

20 11. CBP Officer Moir conducted an inspection of the interior rear seating area of
21 the defendant Honda Accord sedan.

22 A. Officer Moir discovered and removed a total of nine (9) plastic wrapped
23 packages.

24 B. Six (6) of the plastic wrapped packages were concealed in the rear
25 passenger side seat backrest.

26 C. Three (3) of the plastic wrapped packages were concealed in the rear
27 driver side seat backrest.

28 //

1 D. The nine (9) plastic wrapped packages discovered in and removed from
2 the defendant Honda Accord sedan contained methamphetamine, a Schedule II Controlled
3 Substance.

4 E. The gross weight of the nine (9) packages of methamphetamine was
5 approximately 5.43 kilograms (11.9 pounds).

6 12. Agents of the U.S. Homeland Security Investigations (“HSI”) evaluated the
7 defendant Honda Accord sedan and the approximately 52 plastic wrapped packages of
8 controlled substances concealed aboard.

9 A. The HSI agents were highly trained and experienced investigating
10 controlled substances such as methamphetamine and heroin, and those who smuggle such
11 substances into the United States.

12 B. Based upon the quantity of methamphetamine and heroin discovered
13 aboard the defendant Honda Accord sedan, the way the methamphetamine and heroin was
14 packaged, and a number of other factors, the agents concluded it was transported by
15 Alvarez Gutierrez for the purpose of selling or delivering it to other persons for commercial
16 distribution, and not for his personal consumption.

17 13. The defendant 2011 Honda Accord sedan constitutes a conveyance, used or
18 intended to be used to transport or to facilitate the transportation, sale, receipt, possession,
19 or concealment of a controlled substance, to wit: methamphetamine a Schedule II
20 Controlled Substance, and heroin, a Schedule I Controlled Substance, in violation of
21 Chapter 13, Title 21, United States Code.

22 14. As a result of the foregoing, the defendant 2011 Honda Accord sedan is liable
23 to condemnation and to forfeiture to the United States for its use in accordance with
24 Title 21, United States Code, Section 881(a)(4).

25 15. The defendant 2011 Honda Accord sedan is presently stored within the
26 jurisdiction of this Court.

27 //

28 //

1 WHEREFORE, the United States prays that due process issue to enforce the
2 forfeiture of the defendant 2011 Honda Accord sedan, and that due notice be given to all
3 interested parties to appear and show cause why said forfeiture should not be declared.

4 DATED: August 30, 2019

5 ROBERT S. BREWER, JR.
6 United States Attorney

7 s/ Bruce C. Smith _____
8 BRUCE C. SMITH
9 Assistant U.S. Attorney
Attorneys for Plaintiff
United States of America
Email: bruce.smith@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTSONE 2011 HONDA ACCORD SEDAN, CA. LICENSE
7WLC811, VIN: 1HGCP2F43BA092766, ITS TOOLS AND +

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) **'19CV1652 AJB KSC**

AUSA Bruce C. Smith, Phone: (619) 546-8266

USAO, 880 Front Street, Room 6293, San Diego, CA 92101-8893 +

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug Med. Malpractice <input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
---	---	--	---	--	---	--

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 U.S.C. Section 881(a)(6)

VI. CAUSE OF ACTION

Brief description of cause:
Narcotics Trafficking

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/30/2019

s/ Bruce C. Smith

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

VERIFICATION

I, David Owen, state and declare as follows:

3 1. I am a Special Agent with Homeland Security Investigations, and am one of
4 the agents assigned to this investigation.

5 2. I have read the foregoing Complaint For Forfeiture and know its contents.

6 3. The facts set forth in the Complaint For Forfeiture are based upon my own
7 knowledge or were facts furnished to me by other United States law enforcement
8 personnel, civilian witnesses, or other official Government sources.

9 Based on this information, I believe the allegations in the Complaint For Forfeiture
10 to be true.

11 I declare under penalty of perjury that the foregoing is true and correct, to the best
12 of my knowledge and belief.

13 || Executed on August 30, 2019.

David Owen
DAVID OWEN, Special Agent
HOMELAND SECURITY INVESTIGATIONS

28